

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Ind. Co. Cable TV, Inc.)	
)	File No. EB-02-TS-208
Operator of Cable Systems in the State of:)	
)	
Arkansas)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: October 1, 2002**Released: October 7, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Ind.Co. Cable TV, Inc. ("Ind.Co. Cable") temporary waivers of Section 11.11(a) of the Commission's Rules ("Rules") for 22 cable television systems in the above-captioned state. Specifically, we grant 24-month waivers of Section 11.11(a) for two cable systems listed in Attachment A and 36-month waivers of Section 11.11(a) for 20 cable systems listed in Attachment A. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.¹

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.² In 1994, the Commission adopted rules requiring cable systems to participate in EAS.³ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁴ The

¹ 47 C.F.R. § 11.11(a).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

³ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

⁴ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and Order").

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁵ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁶ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁷ The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.⁸

3. On May 23, 2002, Ind.Co. Cable filed a request for temporary, 24-month and 36-month waivers of Section 11.11(a) for 22 cable systems in the State of Arkansas. In support of its waiver request, Ind.Co Cable states that these are small, rural cable systems with the largest two systems, Pangburn and Forrest City, serving 824 and 883 subscribers, respectively, and the 20 smaller systems each serving between 29 and 755 subscribers. Based on price quotes provided by an EAS equipment manufacturer, Ind.Co. Cable estimates that it would cost between \$7,290 and \$7,790 to install EAS equipment at each of these systems. Ind.Co. Cable asserts that this cost will impose a substantial financial hardship on it and provides its 2001 financial statement in support of this assertion. In addition, Ind.Co Cable submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. In this regard, Ind.Co Cable notes that its subscribers currently have access to national EAS messages on at least 38% of their programmed channels. Ind.Co. Cable also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

4. Based upon our review of the financial data and other information submitted by Ind.Co. Cable, we conclude that temporary, 24-month waivers of Section 11.11(a) are warranted for the largest two cable systems in Attachment A and temporary, 36-month waivers of Section 11.11(a) are warranted for the smaller 20 cable systems in Attachment A.⁹ In particular, we find that the estimated \$7,290 or more cost of EAS equipment for each of these small cable systems could impose a financial hardship on Ind.Co. Cable.

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

⁹ The 24-month waivers will extend from October 1, 2002, until October 1, 2004, and the 36-month waivers will extend from October 1, 2002, until October 1, 2005. Additionally, we clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

5. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.¹⁰ Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.¹¹

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹² Ind.Co. Cable TV, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2004 for two cable television systems in Attachment A and **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for 20 cable televisions in Attachment A.

7. **IT IS FURTHER ORDERED** that Ind.Co. Cable TV, Inc. place a copy of this waiver in its system files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested counsel for Ind.Co. Cable TV, Inc., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

¹⁰ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

¹¹ One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

¹² 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

Attachment A**Cable Systems:****Temporary Waiver Granted Until:**

Forrest City, Arkansas	October 1, 2004
Pangburn, Arkansas	October 1, 2004
Black Rock, Arkansas	October 1, 2005
Bradford, Arkansas	October 1, 2005
Calico Rock, Arkansas	October 1, 2005
Cushman, Arkansas	October 1, 2005
Diamond City, Arkansas	October 1, 2005
Evening Shade, Arkansas	October 1, 2005
Guion, Arkansas	October 1, 2005
Gum Springs, Arkansas	October 1, 2005
Melbourne, Arkansas	October 1, 2005
Moro, Arkansas	October 1, 2005
Mt. Pleasant, Arkansas	October 1, 2005
Newark, Arkansas	October 1, 2005
Oil Trough, Arkansas	October 1, 2005
Plainview, Arkansas	October 1, 2005
Pleasant Plains, Arkansas	October 1, 2005
Russell, Arkansas	October 1, 2005
Sidney, Arkansas	October 1, 2005
Tumbling Shoals, Arkansas	October 1, 2005
Tupelo, Arkansas	October 1, 2005
Yellville, Arkansas	October 1, 2005